



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/167162

PRELIMINARY RECITALS

Pursuant to a petition filed July 07, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 19, 2015, at Elkhorn, Wisconsin.

The issue for determination is whether this ALJ has jurisdiction over a matter already decided by another ALJ's written decision on July 9th, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Mary Chucka

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Walworth County. She is a recipient of Medicaid services.

2. On June 12, 2015 the petitioner's provider, [REDACTED] Therapies, S.C. submitted a prior authorization request for physical therapy (PT) services at a frequency of two times per week. The PT services were to commence on July 7, 2015. The total cost of the prior authorization request was \$10,400.00.
3. On July 1, 2015 the Department sent the petitioner a written notice that they modified the prior authorization request for PT services from two times per week to one time per week.
4. On July 10, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
5. The petitioner had a previous fair hearing regarding PT services being modified from two times per week to one time per week. See DHA case number MPA-165448 (a copy of the decision was also included as an attachment to Exhibit 3). That ALJ issued his written decision on July 9, 2015 concluding that the Department had correctly reduced the PT services from two times per week to one time per week. That ALJ noticed that based upon the timeframe and the number of sessions requested and approved that the Department had inadvertently approved the PT services for two times per week. The ALJ ordered PT services one time per week for the original timeframe requested from April 6, 2015 through October 6, 2015.

DISCUSSION

Claim preclusion (formerly known as *res judicata*) requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as *collateral estoppel*) requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Ibid.*, p. 550.

In this case the petitioner seeks to re-litigate the facts and issues already presented to and decided by ALJ Fleming. This prior authorization request is within the time period in which ALJ has ordered that PT services are only medically necessary one time per week. There is no new information presented by either the Department or the petitioner's mother who represented the petitioner at the hearing. In fact, the Department presented as evidence their prior letter. Their position has not changed. A review of the prior authorization request does not demonstrate that the petitioner's medical condition has changed since ALJ's decision. For example, ALJ Fleming writes:

[the petitioner's mother argues that the] petitioner has had a number of surgeries and that has not allowed [the] petitioner to progress in therapy at times as much as recover and rehabilitate. The last surgery was in September 2013 and the next surgery will possibly be in about 3 years. Finally, she also indicated that the petitioner has recently had a growth spurt and made little progress in therapy for approximately 2 weeks.

The petitioner's mother on behalf of the petitioner reiterated these exact same arguments during this hearing. She further indicated that she because she is not a trained therapist and has not had the school or training to be one, one time per week with a home routine is not enough. I believe that this was directly addressing ALJ Fleming's decision where he wrote:

The evidence does not demonstrate that increasing the PT frequency from 1 time per week to 2 times per week is necessary or any more efficacious than the approved frequency of PT. It is apparent that [the] petitioner is in need of some

combination of strength, balance, endurance and coordination exercises and this is best accomplished via repetition and practice. A consistent home program and integration of activity into daily routines is really the only way to effectively do this.

The petitioner already had an opportunity to present and litigate the issues related to therapy services being reduced from 2 times per week to 1 time per week. It even appears that she continued to receive therapy services 2 times per week despite ALJ Fleming's order to contrary. Unless there is a change in the petitioner's medical condition, for example, a new surgery, I am without jurisdiction to change ALJ Fleming's decision. If the petitioner disagreed with the prior decision, the proper course of action is to request a rehearing on that decision or file an appeal on that decision. I further note that even if I had jurisdiction I would find against the petitioner for the exact reasons stated in ALJ Fleming's decision.

CONCLUSIONS OF LAW

This ALJ does not have jurisdiction over a matter already decided by another ALJ's written decision on July 9th, 2015.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

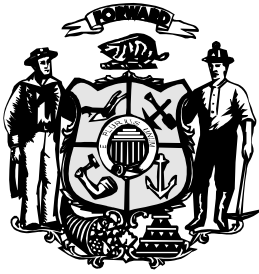
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

...

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of September, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 2, 2015.

Division of Health Care Access and Accountability